

# **Brazilian Perspectives**

# Challenges and Responses in Brazil: The Federal Police



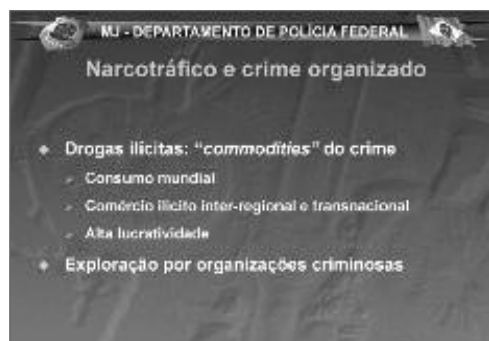
## **Roberto Troncon**

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It falls to me in this session to present on the subject of Drug Trafficking and International Security from the Brazilian perspective, and specifically from the perspective of the Federal Police. Those present at this symposium are a select audience and do not only work in the area of policing, but also in the area of prevention. With this in mind, I am not going to approach the subject by talking about successful Federal Police operations, and I am not going to talk about specific cases of significant criminal organisations that have recently been broken up and neutralised in Brazil. I would prefer to approach the subject briefly from the angle of an analysis of events over the last decade in Brazil. So, I am going to speak about approaches taken to address the phenomenon of drug trafficking and, by drawing a parallel with organised crime, I will touch on mechanisms that have been implemented in Brazil for the reduction of the supply of drugs. I will also briefly talk about the integrated actions of the security forces, specifically those taken by the judicial police here in Brazil, and finally I will end with the challenges that the Federal Police faces in the phenomenon of drug trafficking.

The illegal drug trade: from our point of view, drugs represent a commodity in the

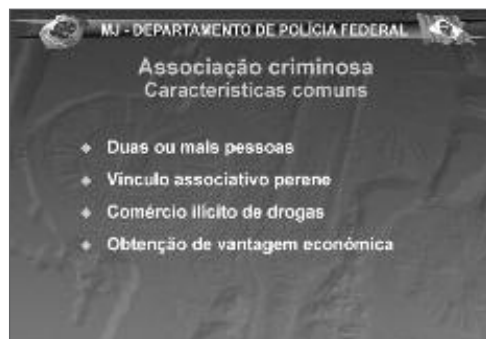
underworld of crime. Why? Because all over the world there is consumption, or a market of consumers. Unfortunately, nowadays there is no country that can boast of not having this problem. The predominant characteristic of the drug business is that it is interregional and transnational. It is also a business that brings high financial returns for everyone involved, especially when policing mechanisms are working well. Consequently, the level of profitability increases, and other people are encouraged to get into this business. Due to these characteristics, and also because drugs are a commodity in the underworld of crime, this is not normally a crime committed by people working alone. The truth is that in most cases, at least in the most serious, wide ranging cases, these crimes are committed by criminal organisations. These organisations are referred to by our antidrug law as criminal associations (*slide 3*).



Slide 3

From the point of view of Brazilian legislation, these criminal associations all have the following common characteristics: they bring together two or more people who have permanent and stable links to each other. They are focused on illicit drug trafficking, and their aim is to gain an economic advantage or profits (*slide 4*). Therefore, it can be said that these associations are true criminal drug

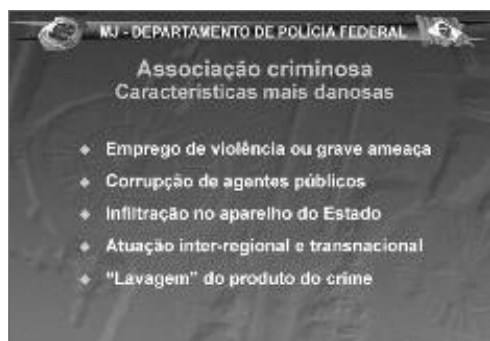
trafficking businesses, as they have a very large graduated structure that goes up from small regular businesses to small micro-businesses that can grow into large trans-national organisations that act in several countries.



Slide 4

Several characteristics can be noted in the most dangerous and disastrous form of these criminal associations: the use of violence and serious threats against people and against public agents who are in charge of policing, corruption of agents and infiltration into the apparatus of the State. (Here, I would like to make a brief observation about the different levels of corruption. Corruption can be the simple, isolated act of bribing a police officer at a control point or at a roadblock. It can also be a lot more serious than just interfering with the State. This is related to the economic power of criminal organisations or, in other words, aiding people who belong to criminal organisations to get jobs in key public positions. These public positions can range from prison and police officers to judges. It is even possible - and I am not referring to any particular cases, but simply the possibility that exists for this to happen - that people could be funded to hold high level public positions in the parliament and in the executive branch, in the three levels of government). Another characteristic of criminal organisations,

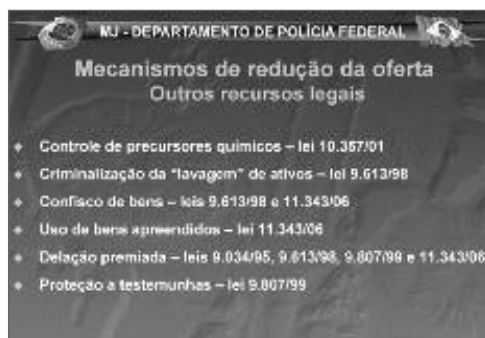
which I have already mentioned, is their network of interregional and international operations. The criminal group is not tied down to a specific location, as it has different branches that act across country boundaries. This therefore causes additional difficulties for crime repression mechanisms in all the countries that they act in, because the organisations tend to infiltrate the rules and internal laws, they tend to form links with each other – forcing policing mechanisms to form links and to integrate to be successful with the large scale neutralisation of these organisations (slide 5).



Slide 5

Finally, these criminal organisations use the mechanism, as we say in Brazil, of laundering money (slides 5 and 8) that is earning from drug trafficking activities. There are several different phases involved in the money laundering process. The immediate profit is obtained and the money is hidden. This is not only applicable to the case of drug trafficking, but also to any crime that is defined by legislation as being a precursor to money laundering. This product of crime, of drug trafficking, is integrated into the formal economy in a concealed way. This means that when the group is subjected to a repressive action, its members are taken prisoner and part of their property is taken away and confiscated. The rest of it, however, could be hidden, disguised behind regular activities and

belonging to companies or individuals who do not have any links that associate them to the group. This is how they conserve their economic power.

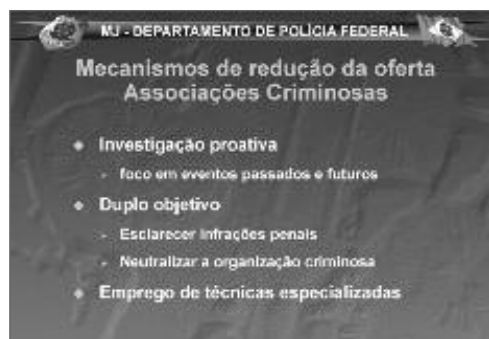


Slide 8

Therefore, having dealt with the phenomena of drug trafficking and organised crime, I can affirm that I can see a close relationship between the two of them. The most damaging, large scale drug trafficking is always carried out by organised criminal groups. How is this dealt with? How can we repress these groups of organised criminals, especially groups of drug traffickers?

Our legislation is based on the Penal Processes Code that is currently in force. This dates from the 1940s and sets out investigation methods that were suitable for people working in law enforcement in those times. If we look at articles 10 onwards of the Processes Code, which describe police investigation methods, it can be very clearly seen that nowadays we would call this investigation method “reactive”. So, how does it work? Let’s imagine the following situation: A police officer is sitting in the police station and news comes in that a crime, a theft or a homicide has been committed. The officer goes to the place where the crime has been committed, and only that place. He collects evidence, holds interviews and questions people and he calls in the technical expert. This is how they

attempt to follow the 1940 Penal Code. In other words, the issue turns into an event that happened in the past. The crime happened and the prevention mechanisms in place were not sufficient to prevent it. Once the crime has taken place, the officers attempt to find proof that this crime really existed and of who committed it. This is the way that the repressive activity described in the Processes Code is closed (*slide 6*).

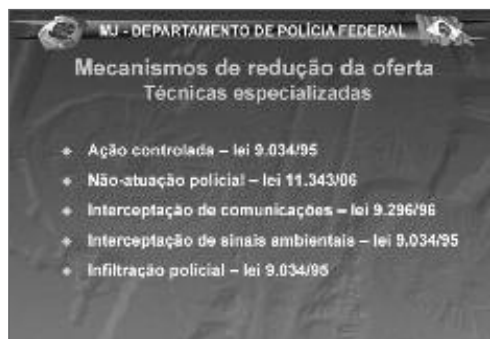


Slide 6

However, our concept of organised crime, that is now part of our legislation, is the same as the concept adopted by the United Nations convention on transnational organised crime by legislative decree 231/2004. This decree describes and characterises groups that act continually. Groups like these commit a crime on one day; the authorities get to know about it, and begin to investigate this crime as an isolated incident, an act, an event that happened in the past. If this organisation is not neutralised or dismantled, it will be planning future crimes at the same moment and will continue to commit crimes in the future. So, a different approach has to be taken. The Brazilian state has, therefore, approved special laws to complement the actions taken by the judicial police in the country. These laws allow us to develop a different type of investigation, which is classified today as proactive investigation.

These proactive investigations are focused on two areas, or have two objectives: the first is to investigate the crime that happened in the past, the information about the existence of drug trafficking in a certain place, and the second objective is to identify the full extent of the organisation and to dismantle the group. To this end, special techniques are used that were approved by new legislation in the 1990s. It is worth briefly mentioning a few of these techniques here: controlled action set out in law number 9,034 (we call this fighting crime: the organised crime law). This act was ratified and further clarified by law 11343 to become the current law on drugs, which we normally call non-police action. The current law on drugs sets out things that the previous law did not, such as, for example, controlled international delivery. The truth is that federal judges and the Brazilian Federal Public Ministry based their decisions on the UN convention on illegal drug trafficking for all the cases of observed international delivery that took place before the introduction of law no. 11,343. This is because law 9034 merely stated that police action should be delayed to wait for the best moment from the point of view of repressing crime. As can be seen sometimes, the truth is that the law on drugs does not mean a delay to police action; but specifically international cooperation is involved, through which the Brazilian state relinquishes some of the sovereign power that it has over investigation, punishment and application of the law to allow the other States (other countries), where the drugs are being trafficked to, to be able to carry out their operations in a more complete and efficient way. Instead of capturing the transporters here (or mules as they are known in police jargon) who transport illegal drugs, we forgo capturing

this element at the base of the pyramid-shape criminal structure, to allow the other State, in the case of observed international deliveries, for example, where the drugs leave the country and travel abroad, to identify and arrest the people who import the drugs into their country (*slide 7*).



Slide 7

Furthermore, we are able to intercept phone calls and computer communications, as well as radio transmissions and signs of police infiltration. All of these techniques are commonly used by the police forces, by the Brazilian judicial police. Through the use of these techniques, which have been approved by our legal framework, we have been able to develop what we now call proactive investigations (*slide 7*).

Brazil also has other approved legal resources available that seek to reduce the supply of drugs. The control of chemical ingredients that are used to make illegal drugs in the country is one of these. This law, which was made in the year 2001, greatly increased the number of controlled products (*slide 8*). Unless I am mistaken, there are 146 controlled substances today, a much greater number than some other country. Legislation in Latin American countries allows for a very wide range of chemical products. Under this law, they can be used directly or indirectly in some ways, but rigorous controls are in place for any

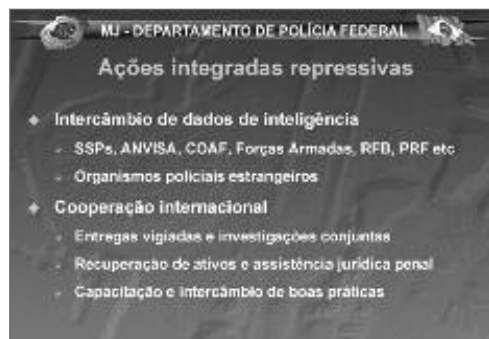
company that produces, imports, exports, commercialises or stores the products in any way. These companies have to have prior authorisation, obtained from the Ministry of Justice and the Federal Police, and they are submitted to rigorous controls. This whole process is designed to avoid these products being used for anything other than their legal use (*slide 8*).

The criminalisation of money laundering, introduced by law 9,613 in 1998, was another very important advance made to our legislation. There is a very pragmatic and very interesting logic behind the confiscation of property. This appears in the money laundering law as well as in the drugs law (antidrug), and had previously featured in ratified law no. 6,368. We use the resources that belong to the criminals themselves against them. We apprehend vehicles and property, and the vehicles that are administered by the National Antidrug Secretariat (SENAD) are placed at the police force's disposal when policing action needs to be taken. This allows the resources belonging to the drug traffickers to be used against them in a very agile way. Rewards for information also feature in four different laws in Brazil: the organised crime law, the money laundering law, the witness protection law and the antidrug law itself, the law on drugs. Witness protection has also been a feature since 1999 and, by using this law, the police forces are able to guarantee the safety of a witness who is threatened by those against whom they give testimony or provide evidence (*slide 8*).

Now that I have analysed all of the legal framework that today sustains, or provides a foundation for, actions taken by the police forces, the judicial police, I will now briefly summarise some integrated policing actions

that have been carried out here in Brazil.

The exchange of intelligence information is already a reality. We have exchanged a lot of information with the Office of Public Security, as well as with the Health Monitoring Agency, our financial unit, Armed Forces intelligence bodies, the Federal Revenue Office, the Federal Highway police, etc. This activity was already taking place and I am pleased to say that more of it goes on every day. This exchange of information or intelligence data, as we who work on the issue of drug trafficking call it, does not just take place domestically but also with foreign police organisations. All the countries - at least those who have most direct contact with Brazil, either through Interpol or through official police attachés in Brazil and Brazilian representatives overseas - use this flow of information to take on the phenomenon (fighting drug trafficking), in a systematic way that has functioned reasonably well (*slide 9*).



Slide 9

International Cooperation has also manifested itself in other ways. I have just talked about the law that provides a basis for observed deliveries and even for joint investigations. I would like to change the subject for a moment in order to clarify what these joint operations deal with (*slide 9*). A drug trafficking organisation or

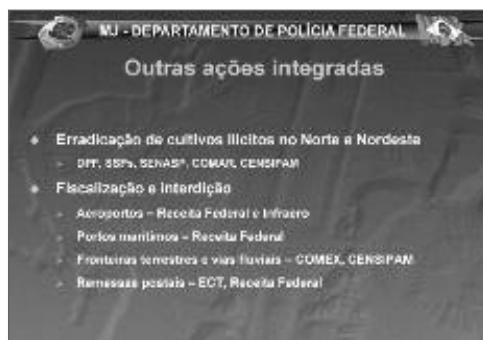
business that acts in two or more countries, and has members who are involved in areas of drug trafficking activity, becomes subject to an investigation in each country, which then leads to this joint investigation. In the end, these investigations are carried out in a coordinated way with an intense exchange of information, during which the ideal time and date for using or executing an arrest warrant is adjusted right up to the last minute. So, whilst the secret phase of the investigation is being carried out, everyone involved is subject to the law of the country where a particular organisation is investigated. This is carried out by obtaining judicial authorisations that are monitored by the Department of Public Prosecution. There is, however, an express authorisation that comes from the judiciary itself that this information, even if it is protected by secrecy, can be shared between organisations or foreign organisations from other countries to allow better coordination and use of the element of surprise in the apprehension of these criminal groups. Overall, this practice has had positive results in Brazil, and the Federal Police has gained a lot of experience in the fighting and dismantling of criminal groups: for example, there are Colombian groups working in Brazil, because all the drug traffic goes through here on its way to North America. The leader was here in Brazil, disguised as a businessman. Due to an intense exchange of information, these people (these groups) that were found here and who had not trafficked even a single gram of cocaine inside the country, were arrested, processed and convicted under the money laundering law. They were also processed and convicted for their crimes committed overseas.

Recovery of assets is another method that

has been a very important factor in this international co-operation (*slide 9*). In 2003, Brazil created the asset recuperation department, linked to the Ministry of Justice, for international legal cooperation. This department has centralised, empowered and streamlined the processes of identifying, confiscating and requesting the recuperation of assets produced or obtained through the criminal activity of drug trafficking. Requesting the recovery of assets involves confiscating them and returning them to the country. This process works both ways, as we request cooperation from foreign countries and we attend to requests made by these countries for recovering assets located in Brazil.

Finally, this international cooperation can also commonly be seen in training and exchange of good practices. The same training for police officers from European countries, which is offered a lot in North America and here in South America, is being offered to Brazil. These training and refresher courses and seminars are very important, not just because we can acquire new knowledge from the organisations that offer us the training, knowledge that has been developed by that country, but also because it is a very favourable environment for forging relations. This is important now, when we increasingly need to be integrated with our partners and opposite numbers in other parts of the world to be successful in what we are trying to do. Recently, during its current administration, the Brazilian Federal police has started to offer training to several countries where the official language is Portuguese, as well as to countries from the Mercosur . They took this action due to the demand that exists, just as Luiz Fernando [Corrêa] showed us in this section. The first part of this action

made it possible for these police officers to attend our regular training courses at the National Police Academy. These are courses of long duration, and everything that is taught during the training of these new police officers is information that is not restricted at all for police officers from friendly nations (*slide 9*).



Slide 10

There are other more specific actions being taken, and all of them are associated with current Federal Police programmes. I will mention a few very quickly: the eradication of illegal cultivations in the northern and north-eastern regions, although the truth is that the illegal cultivation in these regions is mostly “Cannabis Sativa” (marijuana) (*slide 10*). Just last year, we carried out an operation that was aimed at prohibiting these illegal plants. There is also a sequence of similar operations in place that will be carried out periodically over the next few months. The Public Security Secretariats in the individual states act alongside the Federal Police during these operations. The States of Maranhão, Pará, Pernambuco and Bahia all took part in the first action. The National Public Security office was also involved, providing helicopters to support the action. The air force also got involved, along with the Aeronautical Command, the Amazon Protection System Centre, the Amazon Environmental Protection System (SIPAM) and the Amazon Surveillance

System (SIVAM). The aim of this last body is to protect the Amazon. It was set up to identify environmental crimes, and to assist with identification. With their help, we are trying to increase the identification of these illegal cultivations.

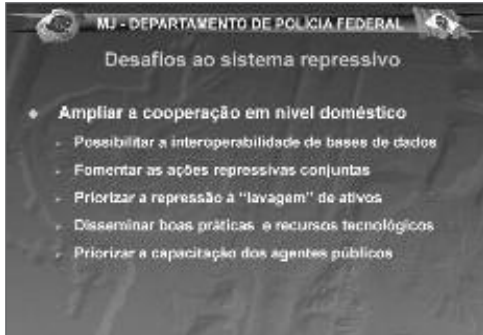
Furthermore, we have also carried out several inspection and prohibition operations in airports, in partnership with the Revenue Office and the Airport Authority. We have also carried out operations in marine ports in partnership with the Revenue Office. We have done a lot of work with cargo, land borders and river ways in partnership with the Army Command and the Amazon Protection System's Management and Operations Centre (CENSIPAN), as well as with drug trafficking carried out by post and by courier activities, in partnership with the Revenue office and the Post Office (*slide 10*).

Now I am going to address the challenges that lie ahead for us.

I believe that the increase in cooperation, both on domestic and international levels, has already been stated. I would like to join those who have already raised the point in this conference's sessions, as I believe that cooperation is the common factor in every state and every organization that deals with this issue, nationally and internationally. We live in a globalised world, where there are increasingly fewer obstructions to foreign trade and the circulation of people and property, as well as favourable conditions for more intense interactions and communications. This world even fights against States that have defined territories, against sovereign states with their own legislation that are bound to follow the internal rules set by government

organizations that are trying to repress drug trafficking. We have to observe all the laws, territorial limits and financial limits that apply to our country, so how are we going to act against international criminal business? If I am working with Brazil on a federal level, this means that, by myself, I cannot affect what happens on a state level and I am not able to touch the parts of a crime business that are located in another foreign country. There is only one way to change this, and that is through co-operation; signing treaties and agreements and observing United Nations conventions whilst always looking to implement suitable legislation, and seeking to increase and expand manifestations of co-operation. On the other hand, all the existing obstacles that everyone has to observe need to be minimised. I think that the great challenge that we are faced with today, at the level of domestic operations, is to enable (a very fashionable word at the moment) a system of database interoperability (*slide 11*). What does this mean? All the bodies involved (the Rio de Janeiro Public Security Secretariat, the Federal Police, as well as other public security offices and other federal and state organizations), work with their own databases as well as the ones belonging to the Judicial and Military Police forces that are most directly linked to the repression of crime. In this way, everyone works with everyone else's information. This information is not interoperable at the moment, at least not widely. What does this mean? Even within the Federal Police itself, we have the idea that information is a very precious commodity that has to be treated very carefully to avoid it being used wrongly. This derives from the mission-culture that police officers, investigators, and public agents have for investigating and punishing crime. So, there is a natural

tendency for public agents, who work for the crime repression system, to protect and sometimes excessively protect their information. This is not just a Brazilian tendency, because it is seen all over the world.



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So what is the challenge? The challenge is to create database interoperability, and the Federal Police has taken action and acquired technological tools that will allow their data to be perfectly interoperable in a secure environment (100% auditable). They will be able to share data with other federal bodies, but mainly with the Public Security Office. In exchange, the Public Security Offices will agree to stick to the model of providing access to their data, which will in turn allow them to enjoy access to data that belongs not only to policing organisations, but also to other auxiliary organizations that are involved in the fight against drug trafficking. The second challenge is to encourage joint policing actions, which is more directly linked to the Public Security Office.

We have already worked with the Rio de Janeiro Public Security Secretariat on very important cases like Operation Phoenix, where the money laundering and financial systems belonging to a famous drug trafficker were attacked. This drug trafficker is now in jail. Today, the objective is to

continue maximising this sort of interaction on specific cases.

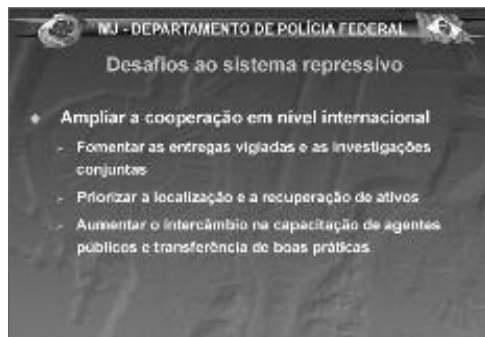
Prioritising money laundering also means making a cultural shift. It is not enough just to confiscate the drugs and put the drug traffickers in jail: their whole financial structure and property has to be attacked as well. This is because the drug trafficker, or group of powerful drug traffickers, still have all of their financial resources available to them while they are in prison (this has already been seen in Brazil and in other countries). They can use these resources to obtain the best assistance from liberal professionals, and even to manage their business. So, it is not sufficient just to put the criminal directors, presidents and all of the board members in prison; we also have to bankrupt them, we have to financially break up these organisations.

Spreading good practice and technological resources throughout the programme that I have been talking about, also means requiring excellent practices from the state police forces in some states like Rio de Janeiro, São Paulo and Minas. These are police organisations that have existed for a long time, and they will be required to adopt practices to improve cooperation on a domestic level (*slide 11*). What does the word “order” mean in this sense? It means that knowledge should not be kept secret. On the contrary, order means sharing knowledge, learning with our colleagues and handing over anything that could be helpful to their work. In the same context, it means prioritising training for public agents.

Finally, the idea is to promote observed deliveries and joint investigations, not just on the domestic level but on the international level as well. We are no longer

interested in showing the drug confiscation statistics, because, as our teacher Dr. Getúlio Bezerra Santos has said, behind these statistics lies a year-long, large investigation, involving several tonnes of drugs in a certain condition. As a result of this type of investigation, however, we only catch what we normally call the “trucking kit”. In other words, we catch the driver or the mules. Mules can be defined as the truck driver that transports marijuana from one place to another, or the pilot that flies drugs from Brazil to somewhere else (*slide 12*). We are not tackling the root of the problem, because the root of the problem lies in breaking up the high levels of the criminal organisation, rather than its component parts of workers, receptionists and drivers. Thus, with regards to observed deliveries, there is a solid arrangement for action in Brazil today. The amount of drugs does not matter, as statistics no longer mean anything in this new strategic vision - they cannot be used for evaluation and monitoring purposes. For example, we can allow a large three ton shipment of cocaine to leave Brazil rather than taking control of the drugs here in Porto de Santos. We do this because we can see the opportunity, in the destination country, of hitting a higher level of the organisation hard with a further-reaching action that leads to more efficient dismantling. The location and recovery of assets should also be prioritised. As has already been pointed out, it is not enough just to co-operate with countries who request identification and localisation from us, as we should also use the tool ourselves and encourage our colleagues at the state level to use it as well. To this end, we have the bilateral agreements that Brazil has signed in recent years that allow us to freeze or confiscate property that is overseas, or belongs to foreign drug traffickers who are

in Brazil with the aim of bankrupting them. Finally, along the same lines, we have to increase training exchanges for public agents and the transfer of good practices, on an international as well as an internal level.



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